

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION**

SHANNON PEREZ, *et al.*,
Plaintiffs,

and

EDDIE BERNICE JOHNSON, *et al.*

and

TEXAS LEGISLATIVE BLACK CAUCUS,
TEXAS HOUSE OF REPRESENTATIVES

and

TEXAS CONFERENCE OF NAACP
BRANCHES, *et al.*
Plaintiff-Intervenors,

v.

STATE OF TEXAS, *et al.*,
Defendants.

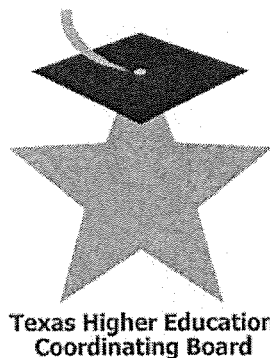
CIVIL ACTION NO.
11-CA-360-OLG-JES-XR
[Lead case]

**DEFENDANTS' DESIGNATION OF FACT WITNESSES, EXPERTS
AND PROPOSED TRIAL EXHIBITS**

**EXPERT REPORT
OF
DAVID GARDNER, PH.D.**

TEXAS HIGHER EDUCATION COORDINATING BOARD

Minority Participation and Success in Texas Higher Education



08/22/11



Mission, Philosophy, Historical Efforts, and Long-Term Strategic Plan Texas Higher Education Coordinating Board

The Texas Higher Education Coordinating Board (THECB) was created by the Texas Legislature in 1965. The enabling legislation stated that the THECB is created "to establish in the field of public higher education...an agency to provide leadership and coordination for the Texas higher education system, and institutions and governing boards, to the end that the State of Texas may achieve excellence for college education of its youth through the efficient and effective utilization and concentration of all available resources and the elimination of costly duplication in program offerings, faculties, and physical plants." The THECB's philosophy is to promote access to quality higher education across the state with the conviction that access without quality is mediocrity and that quality without access is unacceptable. We believe higher education should be accessible to all those who seek and qualify for admission. Neither financial nor social status should serve as a barrier to opportunities for higher education in Texas. Financial aid as well as academic and social support services should be available. We expect Texas colleges and universities to actively recruit and retain students from populations that have not fully participated in higher education.

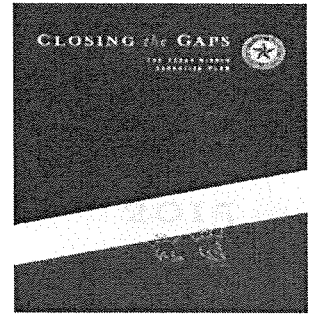
Since its creation, the THECB, on behalf of the state, has aggressively addressed inequities in Texas higher education. For example, after studying Texas from 1978 to 1980, the federal Department of Education's Office for Civil Rights (OCR) notified Texas of its finding that vestiges of the state's *de jure* system were still present: Blacks were segregated and Hispanics were underrepresented in student enrollment and as faculty at the state's colleges and universities. On behalf of the state, the THECB entered into an agreement with OCR to implement an equal educational opportunity plan. The *Texas Educational Opportunity Plan for Higher Education* (commonly called the "Texas Plan") was carried out from 1983 through 1985. The THECB voluntarily submitted a second successive plan to cover the period from 1989 through 1994, and a third successive plan, formally called *Access and Equity 2000*, was carried out from 1994 through 2000. In May of 2000, then-Governor George W. Bush signed the *Texas Commitment* with OCR, in which the state committed "to provide all of its citizens with full opportunities to participate in the benefits of its public education system." To implement this commitment, the THECB developed the *Priority Plan to Strengthen Education at Prairie View A&M University and at Texas Southern University*. As a result of this plan, the Texas Legislature has appropriated over \$386 million in supplemental funding to Prairie View and Texas Southern from 2002 to 2011.

Another significant event in the history of Texas higher education occurred in 1987, when the *League of United Latin American Citizens (LULAC), et al. v. Ann Richards, Governor of Texas, et al.*, was filed in district court in Brownsville, Texas. Plaintiffs alleged that the manner in which higher education programs were approved and funded discriminated against Hispanic citizens living along the Texas-Mexico Border. The case was eventually resolved with the Texas Supreme Court entering judgment on behalf of the THECB and other defendants. The litigation was followed by over \$400 million in state appropriations for new programs and facilities at public universities located in South Texas and along the Texas-Mexico Border.

Finally, in 1996, the Fifth Circuit U.S. Court of Appeals ruled, in *Hopwood v. Texas*, that race and ethnicity had been used illegally in admissions decisions at The University of Texas at Austin Law School and prohibited the use of race and ethnicity in admissions. Subsequently, Texas Attorney General Dan Morales issued an opinion stating that the *Hopwood* ruling applied to all of Texas public higher education, and that race and ethnicity could no longer be used in admissions and financial aid decisions at any Texas public higher education institution. In 1997, the Texas Legislature responded by passing HB 588 by Representative Irma Rangel to provide students graduating in the top ten percent of their high school class with automatic admission to the state's public universities. This sent a strong message to the students of Texas that regardless of their local circumstances and the color of their skin, if they worked hard to achieve high academic standards, they would have an opportunity to go to any Texas public university of their choice. In 2007, the Texas Legislature appropriated \$20 million for the Top Ten Percent Scholarship program for students who graduate in the Top Ten Percent of their high school class. In 2009, total appropriations for this program increased to \$54 million for the 2010-11 biennium.

Today, education has never been more important for the future of Texas and its people, no matter where they live. People with more education tend to earn much higher incomes, help build and sustain strong communities and economies, have a higher quality of life, and are better prepared to contribute to an increasingly global society. While progress is encouraging on many fronts, Texas remains behind other states in education outcomes, and educational gaps continue to exist among its people and regions. Clearly, Texas must close these gaps to ensure a brighter future for all the people of the state.

The THECB's mission is to work with the Legislature, Governor, governing boards, higher education institutions and other entities to help Texas meet the goals of the state's higher education plan, *Closing the Gaps by 2015*, and thereby provide the people of Texas the widest access to higher education of the highest quality in the most efficient manner. *Closing the Gaps by 2015*, the state's higher education plan adopted by the THECB in 2000, lays out four goals: to close the gaps – within the state and between Texas and other states – in student participation, student success, excellence, and research. Below is the plan's vision statement for Texas higher education:



"Every Texan educated to the level necessary to achieve his or her potential; no one is left behind, and each can pursue higher education; colleges and universities focus on the recruitment and success of students while defining their own paths to excellence; education is of high quality throughout; and all levels of education, the business community, and the public are constant partners in recruiting and preparing students and faculty who will meet the state's workforce and research needs."

The plan acknowledges the gap in education levels among racial/ethnic groups in both enrollment and graduation from the state's colleges and universities. It embraces the population changes sweeping the state and focuses on the subsequent educational challenges that need to be met.

"Reaching the goal will also require increasing participation [and success] from every population group, but especially Hispanics and Blacks."

Since 2000, the Coordinating Board has focused on methods to ensure that the state reaches the goals set out in *Closing the Gaps*. At each quarterly Board meeting, THECB staff provides an update on one or more goals of *Closing the Gaps* and measures the state's progress towards achieving the goals. In 2010, we recognized that the state is not performing as well on some of the intermediate targets needed to reach the goals. Thus, the THECB adopted the *Accelerated Action Plan on Closing the Gaps* which focuses even more attention on the enrollment and success of Hispanic students in Texas higher education.

Achieving the goals of *Closing the Gaps* will be essential for Texas to meet the needs of its growing workforce, build strong and vibrant communities, and catalyze a dynamic, innovative, and globally competitive economy. While it will be challenging to do so, reaching national parity is achievable if stakeholders across the state take strong,

coordinated action over the next five years. Texas, however, must strive for even greater gains in student success and higher education excellence – particularly among Hispanics, the fastest growing population in Texas – beyond 2015 that elevate Texas' higher education system to a position of national and global leadership. Thus, while the THECB's efforts and energy in the near term are focused on the *Accelerated Plan for Closing the Gaps by 2015* and monitoring state and institutional progress towards 2015 goals, the agency and its partners will also begin to lay the foundation necessary to reach levels of performance that match and exceed those of the highest performing states and nations. In the coming years, the THECB will work with a broad base of stakeholders across the state to develop and implement a post-Closing the Gaps vision for Texas that aspires to national and global leadership.

A handwritten signature in black ink, appearing to read "David W. Gardner", with a long horizontal flourish extending to the right.

Dr. David W. Gardner
Deputy Commissioner for
Academic Planning and Policy
Texas Higher Education Coordinating Board

Date Signed: August 22, 2011

SUPPLEMENTAL MATERIAL

Data and Reports on Minority Participation and Success in Texas Higher Education

Historical Resources on the THECB

On September 20, 1965, then-Governor John Connally provided a charge to the "Coordinating Board Texas College and University System" (now known as the "Texas Higher Education Coordinating Board") which is available online at:
<http://www.thecb.state.tx.us/reports/PDF/0002.PDF?CFID=12620711&CFTOKEN=54159302>.

In 1987, *The Texas Charter for Public Higher Education*, was adopted as official state policy by the 70th Texas Legislature, and provided a formal statement of the goals and priorities for higher education in Texas. The Charter included a goal relating to accessibility – "higher education should be accessible to all those who seek and qualify for admission. Neither financial nor social status should serve as a barrier to opportunities for higher education in Texas. Financial aid as well as academic and social support services should be available. Texas colleges and universities shall actively recruit and retain students from populations that have not heretofore fully participated in higher education." This charter is available online at:
<http://www.thecb.state.tx.us/reports/PDF/0081.PDF?CFID=12620711&CFTOKEN=54159302>.

In 2000, the THECB adopted the *Priority Plan to Strengthen Education at Prairie View A&M University and at Texas Southern University*, "to provide all of its citizens with full opportunities to participate in the benefits of its public education system." This plan is available online at:
<http://www.thecb.state.tx.us/reports/PDF/0313.PDF?CFID=12620711&CFTOKEN=54159302>

Closing the Gaps by 2015

Closing the Gaps by 2015, a data-driven, statewide higher education plan, was adopted in October 2000 by the Texas Higher Education Coordinating Board with strong support from the state's educational, business and political communities. The plan is directed at closing educational gaps in Texas as well as between Texas and other states and has four goals: close the gaps in student participation, student success, excellence and research. The targets in the plan for Hispanics include: 1) increase the higher education participation rate for the Hispanic population in Texas from 3.7 percent in 2000 to 5.7

percent in 2015, and 2) increase the number of Hispanic students completing bachelor's degrees, associate's degrees and certificates to 67,000 by 2015. The *Closing the Gaps* plan and annual progress reports are available online at the following link:

<http://www.thecb.state.tx.us/index.cfm?objectid=858D2E7C-F5C8-97E9-0CDEB3037C1C2CA3>.

Accelerated Plan for Closing the Gaps by 2015

Achieving the *Closing the Gaps* goals by 2015 is within reach. However, significant gains are needed on several important areas where progress is lagging behind targets. In order to reinforce the statewide vision put forth in *Closing the Gaps* and move Texas aggressively toward the 2015 goals, the Coordinating Board, in 2009, developed and adopted an *Accelerated Plan for Closing the Gaps by 2015*. Two of the key areas of this plan are increasing the participation and success rates of Hispanics in Texas higher education. The *Accelerated Plan* is available online at the following link:

<http://www.thecb.state.tx.us/reports/PDF/2005.PDF?CFID=12620711&CFTOKEN=54159302>.

Regional Plan for Texas Higher Education

The coordination of planning efforts is vital to the success of the *Closing the Gaps by 2015* plan for Texas higher education. Integrating statewide planning activities with institutional and regional efforts is a priority as the state enters the final years of its comprehensive plan. Providing stakeholders with the information, data, and tools they need to incorporate statewide goals and actions into regional planning contexts is an important function of the Coordinating Board. Thinking regionally can help Texas achieve its vision of increased participation and success for the next generation of Texas students. This regional plan is part of a continuing effort to encourage and support regional approaches to higher education planning. It is designed to assist not only those who are directly involved with regional planning efforts, but all levels of planners and policymakers who might benefit from a regional perspective. By emphasizing regional applications of the state *Closing the Gaps* plan and the *Accelerated Plan for Closing the Gaps by 2015*, the Regional Plan promotes alignment between statewide goals and regional activities. Much of the regional data and many of the recommendations highlighted in the Regional Plan focus on state-level planning priorities, such as increasing Hispanic participation and success rates in Texas higher education. The Regional Plan is available online at the following link:

<http://www.thecb.state.tx.us/reports/PDF/2070.PDF?CFID=12620711&CFTOKEN=54159302>.

Higher Education Accountability System

The Texas Accountability System for public higher education provides data for 38 public universities, nine health-related institutions, four Texas State Technical Colleges, three two-year Lamar State Colleges, and 50 community college districts. Key data available: 1) data since 2000 on *Closing the Gaps* goals: participation, success, excellence, and research, as well as institutional effectiveness; 2) both statewide and by-institution data that is meaningful to policy makers, parents, and students alike. The Accountability System is available online at the following link:

<http://www.txhighereddata.org/Interactive/Accountability/>.

Texas Higher Education Almanac

The Texas Higher Education Almanac provides basic information about the characteristics and performance of Texas public higher education – institution by institution – in state and national contexts. The data included in the Almanac show that Texas is well on its way to achieving the goals of *Closing the Gaps*, but challenges remain. The state is doing well in terms of access and participation — enrolling new students — but not so well in terms of student success — students actually completing certificates and degree programs. Texas higher education continues to improve but still lags behind the leading states, and there is still a good distance to travel to assume a position of national and international leadership in higher educational attainment and quality. The Almanac is available online at the following link:

<http://www.thecb.state.tx.us/index.cfm?objectid=26AEABDA-D2CC-4D37-5AB48345339DFCE1>.

High School to College Linkages

These data contain college-going rates by county, school district, and high school. High school/college dual credit enrollments are also included. These data are available online at the following link: <http://www.txhighereddata.org/Interactive/HSCollLink.cfm>.

Significant Statewide Efforts to Increase Minority Participation and Success in Texas Higher Education

South Texas Border Initiatives

In 1987, *League of United Latin American Citizens (LULAC), et al. v. Ann Richards, Governor of Texas, et al.*, was filed in district court in Brownsville, Texas. Plaintiffs alleged that the manner in which higher education programs were approved and funded discriminated against Hispanic citizens living along the Texas-Mexico Border. The case was eventually resolved with the Texas Supreme Court entering judgment on behalf of the Coordinating Board and other defendants. The litigation was followed by significant

increases in Legislative funding for new programs and facilities at universities in South Texas and along the Texas-Mexico Border. In 2003, Coordinating Board staff provided testimony to the Texas Legislature on the South Texas Border Initiatives. The testimony is available online at the following link:

<http://www.thecb.state.tx.us/reports/PDF/0592.PDF>.

HB 588 (75th Texas Legislature)

In 1996, the Fifth Circuit U.S. Court of Appeals ruled, in *Hopwood v. Texas*, that race and ethnicity had been used illegally in admissions decisions at The University of Texas at Austin Law School and prohibited the use of race and ethnicity in admissions.

Subsequently, Texas Attorney General Dan Morales issued an opinion stating that the *Hopwood* ruling applied to all of Texas public higher education, and that race and ethnicity could no longer be used in admissions and financial aid decisions at any Texas public higher education institution. In 1997, the Texas Legislature responded by passing HB 588 by Representative Irma Rangel to provide students graduating in the top ten percent of their high school class with automatic admission to the state's public universities. The Coordinating Board's annual reports on "First-time Undergraduate Applicant, Acceptance, and Enrollment Information" are available online at the following link: <http://www.txhighereddata.org/Interactive/AppAccEnr.cfm>. The data are from fall/summer 1998 (the first year in which the Top 10% law took effect) through fall/summer 2010. The data are broken down by ethnicity, class rank in the Top 10%, Top 25%, and non-Top 10%, by institution and statewide totals. The University of Texas at Austin produces annual reports on the persistence toward graduation of recent Texas high school graduates who were admitted to UT Austin under the Top 10% law. These reports are available online at:

http://www.utexas.edu/student/admissions/research/topten_reports.html (contact: Gary Levine).

HB 713 (76th Texas Legislature)

In 1999, the Texas Legislature established the TEXAS (Towards EXcellence, Access and Success) Grant to provide assistance to academically prepared high school graduates with financial need to pursue higher education. As of FY10, the Legislature has made significant investments (more than \$1.7 billion) in the TEXAS Grant program which represents more than 566,000 awards. The majority of the TEXAS Grant recipients are Hispanic (53% in FY09). For more information about the TEXAS Grant program, go to: <http://www.collegeforalltexans.com/index.cfm?ObjectID=E81912E0-DF96-53C5-8EE1C469C7298F15>.

HB 1403 (77th Texas Legislature)

In 2001, the Texas Legislature passed HB 1403 by Representative Rick Noriega, which classifies certain non-US citizens as Texas residents for tuition and state financial aid purposes. In 2009, the Coordinating Board prepared an overview on the number of non-US students classified as Texas residents and the amount of state revenue used to support these students. The Overview is available online at the following link: <http://www.theccb.state.tx.us/index.cfm?objectid=7D014C29-BE66-0063-3E7B104B8BC5DF3E>. Go to the topic on "Tuition" and then to "Residency and In-State Tuition."

Exemption and Waiver Programs

The Texas Legislature has established various tuition and fee exemption and waiver programs aimed at students from Mexico who attend a Texas public institution of higher education. Examples include the Good Neighbor Scholarship Program, Border County/Nations Waiver for Mexican Citizens with Financial Need, and Waiver for Students from Mexico Enrolled in Graduate Degree Programs in Public Health. For more information about these programs, go to: <http://www.collegeforalltexans.com/apps/financialaid/tofa.cfm?Kind=W>.

SB 573 (77th Texas Legislature)

In 2001, the Texas Legislature passed SB 573 by Senator Bivins, which directed the Coordinating Board to establish a statewide public awareness campaign to promote the value and availability of higher education. The legislation specified that the Coordinating Board give priority to reaching primary and secondary school students from groups or backgrounds that are traditionally underrepresented in higher education. In 2002 through 2010, the Coordinating Board administered this campaign called *Education. Go Get It*. The Spanish component of the campaign was called *Educación. Saber es Poder* and targeted low-income Hispanic students. The Legislature appropriated \$4 million to support the campaign.

Top Ten Percent Scholarship (80th Texas Legislature)

In 2009, the Texas Legislature created the Top Ten Percent Scholarship to encourage students who graduate in the top ten percent of their high school class to attend a Texas public institution of higher education. Eligible students receive up to \$2,000 per semester, must show financial need and enroll full-time in a Texas public college or university. The Texas Legislature initially funded this program at \$20 million for FY2009 and increased funding for this program to \$54 million for the 2010-11 biennium. For more information about the program, go to: <http://www.collegeforalltexans.com/apps/financialaid/tofa2.cfm?ID=385>.

HB 9 (82nd Texas Legislature, Regular Session)

HB 9 by Representative Dan Branch directs the Coordinating Board to develop and propose a funding model that rewards institutions not just for enrolling students, but for getting them through to completion. The Coordinating Board will recommend to the 83rd Texas Legislature changes to the funding formulas that will include specific measures of "student success" such as graduating at-risk students (defined as part-time students, Pell grant students, students with low SAT/ACT scores), bachelor's degrees awarded (at universities), or transferring to a 4-year university, completion of developmental education or completion of first year math or English (at community colleges). For more information, go to:

<http://www.thecb.state.tx.us/index.cfm?objectid=E8E48883-0E99-66EF-9445A942A166C686>.

Generation TX

In 2010, with support from the federally funded College Access Challenge Grant, the Coordinating Board launched Generation TX, a statewide, grassroots movement focused on creating a culture of college and career readiness. The Generation TX movement is a shared vision and a common platform that unites and supports the many existing organizations and programs that put students on the path to college and career education. The campaign is tailored to each region of the state. It was initially launched in San Antonio and targeted low-income Hispanics. The website for this campaign is: www.gentx.org.

Advise TX

Advise TX College Advising Corps is sponsored by the Coordinating Board through the College Access Challenge Grant. The program places recent college graduates from all fields of study on high school campuses as near-peer college advisers to lead low-income and first-generation students to college. This program exposes the growing number of high school students who lack adequate access to information about going to college and empowers students to pursue higher education opportunities. The website for this initiative is: www.advisetx.org.

Texas AVID Postsecondary Project

AVID – Advancement Via Individual Determination – is primarily a national college-preparatory program targeting first-generation, college-going students and academically underprepared students. Applying this successful secondary program to postsecondary education, the Coordinating Board recently implemented the Texas AVID Postsecondary Project. This is a four year pilot project to provide a full range of services for first-time, underprepared college students to improve student success in college. These services focus on the freshman year experience, maintaining connection with

students through completion and ensuring that at-risk students receive the support services (such as counseling, tutoring and academic advising) that will put them on the best footing to complete their degrees. As of spring 2011, a total of 20 institutions have been selected to participate in the Texas AVID pilot, with 11 institutions having begun in fall 2010 and an additional nine institutions recently added in spring 2011. Participating institutions represent the various geographic regions of the state, serve a broad range of student populations, and include Hispanic Serving Institutions, regional universities, aspiring research institutions, as well as community and technical colleges. More information about this initiative is available online at:

<http://www.thecb.state.tx.us/index.cfm?objectid=4F3951F9-F475-DB19-8C94A144784C4E75>.